IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 2506 of 2006(S)

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OA.347/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

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PETITIONERS:

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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF AGRICULTURE, DEPARTMENT OF ANIMAL HUSBANDRY & DAIRYING, NEW DELHI.

2. THE DIRECTOR, CENTRAL INSTITUTION OF FISHERIES, NAUTICAL AND ENGINERRING TRAINING (CIFNET), KOCHI.

3. THE SENIOR ADMINISTRATIVE OFFICER, CENTRAL INSTITUTION OF FISHERIES, NAUTICAL AND ENGINEERING TRAINING (CIFNET) KOCHI.

BY ADV. SRI.P.PARAMESWARAN NAIR, CGC

SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

RESPONDENT:

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N.VEERANNAN, AGED 50 EYARS, S/O.NONDI, FITTER, CENTRAL INSISTUTION OF FISHERIES, NAUTICAL & ENGINEERING TRAINING (CIFNET), KOCHI, RESIDING AT 5/26, IFP QUARTERS, KOCHI 18.

BY ADV. SRI.T.C.GOVINDA SWAMY

SMT.D.HEERA

SMT.SUMY.P.BABY

SRI.P.NPANKAJAKSHAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 6/07/2007, THE COURT ON 10/7/2007 DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1 true copy of O.A.No.347/2004 of the CAT Ernakulam dt. 4.5.2004.

Ext.P2 true copy of the reply statement filed by the petitioners herein in O.A.No.347/2004 dt. 18.11.2004.

Ext.P3 true copy of the order dt. 14.3.2005 in O.A.No.347/2004 of the CAT, Ernakulam.

Ext.P4 true copy of the order dt. 1.4.2005 of the CAT Jabarpur Bench in O.A. 968/2004.

Respondent's Exts:

Ext.R1(a) true copy of the office memorandum bearing No.14-6/2004-Adm dated 27.6.2006.

Ext.R1(b) a true copy of the interim order passed by the Hon'ble Tribunal in OA 347/2004 dated 6.5.04.

Ext.R1(c) a true copy of the judgment in WP(C) 14621 of 2005 dated 25.5.05.

Ext.R1(d) A true copy of the order in EP 740 of 2005 dated 15.11.05.

**K.S.Radhakrishnan**
**&**
**Antony Dominic, JJ.**
**==========**
**W.P(C).No.2506 of 2006**
**==========**

**Dated this the 10th day of July, 2007.**

**JUDGMENT**

**Antony Dominic,J.**

Question that arises for consideration is whether the respondent is entitled to the benefit of the Assured Career Progression Scheme (ACP Scheme) for the Central Government civilian employees. Respondent entered the service under the petitioners on 1.5.1980 as a Diesel Mechanic, which post was subsequently re-designated as Fitter. He was thereafter promoted and transferred as Senior Fitter in 1993, which was declined to be accepted by the respondent for reasons of his own. It was thereafter that the ACP Scheme was introduced by the Government of India with effect from 9.8.1999. It is stated that thereupon the benefit of the ACP Scheme was extended to the respondent, the same was withdrawn by order dated 12.2.2004. In view of the above, the respondent filed O.A.No.347 of 2004 before the Central Administrative Tribunal, Ernakulam Bench seeking to quash the order dated 12.2.2004 withdrawing the benefit of ACP Scheme and for

other consequential reliefs. Tribunal by its order dated 14th March, 2005 allowed the O.A. following its earlier orders in O.A.No.172 of 2004 and O.A.No.122 of 2003 rendered by the Madras Bench of the Tribunal. Aggrieved by the order of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.347 of 2004, this Writ Petition has been filed.

2. Contention that is raised on behalf of the petitioners is that the ACP scheme was introduced to mitigate hardship in view of the stagnation faced by the Central Government employees and that in view of the fact that the respondent had declined promotion, he was not eligible for the benefits of the ACP Scheme. This contention was refuted by the counsel for the respondent asserting his entitlement for the benefit of the ACP Scheme and placing reliance on the orders of the Tribunal mentioned above and the judgment of this Court in W.P.(C) No.14621 of 2005 affirming the order in O.A.No.172 of 2004 and the judgment in W.P.(C) No.1240 of 2006.

3. We have considered the submissions made by counsel on either side. Government of India order dated 9.8.1999 introducing the ACP Scheme for Central Government civilian employees makes it clear that the ACP Scheme was adopted by the Government to mitigate hardship in cases of acute stagnation and on that basis the

Government of India had decided to grant two financial upgradations as recommended by the Fifth Central Pay Commission and also in accordance with the agreed settlement dated 11th September, 1997. It is provided that the employees concerned will be eligible for the benefit of the ACP Scheme on completion of 12 years and 24 years of regular service respectively. Clause 10 of the Government order provides that grant of higher pay scale under the ACP Scheme shall be conditional on the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. It is also provided that in case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard and that as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service which will be reckoned excluding the period of debarment. Still later, various doubts raised in regard to the implementation of the ACP Scheme were clarified by the Government of India as is evident from Ext.P2. One of the queries which has been raised for clarification is regarding the eligibility of a person who has refused promotion offered to him prior

to his becoming eligible for financial upgradation under the ACP Scheme. Ext.P2 in so far as it is relevant is extracted below for reference:

> "Doubt 38:- A person has refused a vacancy based promotion offered to him prior to his becoming eligible for financial upgradation under ACPS, on personal grounds. Will he be eligible for financial upgradation under ACPS?
>
> A person had refused a regular promotion for personal reasons. He has since completed 24 years of service. Will he be entitled for 2nd financial upgradation?
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> Clarification:- The ACP Scheme has been introduced to provide relief in cases of acute stagnation where the employees, despite being eligible for promotion in all respects, are deprived of regular promotion for long periods due to non-availability of vacancies in the higher grade. Cases of holders of isolated posts have also been covered under ACPS, as they do not have any promotional avenues. However, where a promotion has been offered before the employee could be considered for grant of benefit under ACPS but he refuses to accept such promotion, then he cannot be said to be stagnating as he has opted to remain in the existing grade on his own volition. As such, there is no case for grant of ACPS in such cases. The official can be considered for regular promotion again after the necessary debarment period."

4. The ACP Scheme being as above, turning to the facts of this case, it can be seen that the respondent was promoted and transferred

in 1993, which was declined by him for reasons of his own. If he had accepted promotion, when it was offered, he would not have satisfied the requirement of the ACP Scheme at the time when the ACP Scheme was introduced from 9.8.1999. Therefore, it cannot be said that this is a case where the respondent had stagnated in the post of Diesel Mechanic without any benefit of promotion. If that be so, petitioner did not satisfy 12 year of stagnation period prescribed under the ACP Scheme, at the time when ACP Scheme was introduced. If that be the factual position, he was not entitled to the benefit of the ACP Scheme.

5. Counsel contended that while employees who declined promotion prior to the introduction of the ACP Scheme are excluded from the purview of the ACP Scheme, those who have been extended the first higher grade and thereafter declining promotion are continued to be eligible after excluding the period of debarment. This contention takes us to the validity of the provisions of the ACP Scheme, which are not under challenge and in the absence of which we are not called upon to examine the same. Even otherwise, we notice from the provisions of the ACP Scheme that a person like the respondent, who has declined promotion for reasons of his own, is still entitled to be considered for regular promotion as in the case of those who have been extended first grade of financial upgradation. Thus, in our view,

there is absolutely no scope for an argument based on discrimination as well.

6. Counsel for the petitioners heavily relied on the judgments of this Court in W.P.(C) Nos.14621 of 2005 and 1420 of 2006. It is true that the Division Bench of this Court in its judgment in W.P.(C) No.14621 of 2005 had affirmed the order of the Tribunal passed in the case of similarly situated employees. However, we notice that in an application filed by the respondent therein seeking review of the judgment, while disposing of R.P.No.740 of 2005 this Court by its order dated 15th November 2005 clarified that directions granted in the judgment are specific to the persons therein and it will be open to the Department to raise the contentions, which are tenable. Though the judgment of the Division Bench was confirmed by the Apex Court by dismissing the application filed for special leave, in view of the order in the review petition, we are of the view that the petitioners are entitled to urge their contentions on merit. In so far as the judgment in W.P.(C) No.1240 of 2006 is concerned, we notice that the case was decided following the earlier judgment in W.P.(C) No.14621 of 2005 and the order in R.P.No.740 of 2005. In spite of the fact it was open to the respondent to have canvassed the issue on its merits, we do not find that any such contentions were urged before the Division Bench.

For these reasons, we are of the view that in spite of the judgments rendered as above it is still open to us to consider the issue and the judgments do not help the respondent herein to contend that the issue is conclusively decided.

7. In our view respondent has not stagnated in the cadre of Diesel Mechanic in view of the fact that he had declined promotion and thus he has been rendered ineligible for the benefit of ACP Scheme. Tribunal was not justified in granting the reliefs to the respondent and the order in O.A. No.347 of 2004 is patently erroneous. Accordingly, we quash the order of the Tribunal in O.A. No.347 of 2004 and allow this Writ Petition as prayed for.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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